

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0249
Corporate Income Tax
For the Year 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Corporate Income Tax—Assessment

Authority: IC 6-8.1-5-1(b); IC 6-3-4-14; IC 6-3-2-2; 45 IAC 3.1-1-39;
Container Corp. of America v. Franchise Tax Board, 463 U.S. 159 (1983);
Wabash, Inc. v. Department of State Revenue, 729 N.E.2d 620 (Ind. Tax 2000);
Sherwin-Williams Co. v. Dept. of State Revenue, 673 N.E.2d 849 (Ind. Tax 1996)

Taxpayer protests adjustment made by the Department to Taxpayer's corporate income tax return. Taxpayer protests the computation and assessment of corporate income tax by the Department based on the standard method instead of Taxpayer's computations based on the stacked method.

II. Corporate Income Tax—Assessment of Penalties

Authority: IC 6-8.1-5-1(a); IC 6-8.1-10

Taxpayer protests the assessment of penalties by the Department.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation engaged in manufacturing activities inside and outside Indiana. Taxpayer filed a consolidated corporate return including two wholly-owned subsidiaries, Sub One and Sub Two. Taxpayer, Sub One, and Sub Two calculated their consolidated Indiana adjusted gross income for the 2002 tax year using the post-apportionment method, commonly called the stacked method. The Department reviewed the return and calculated the income tax due using the pre-apportionment method, commonly called the standard method. The Department issued an adjustment and assessment for the tax due. Penalties and interest also were assessed. Taxpayer filed a protest and a hearing was held.

I. Corporate Income Tax—Assessment

DISCUSSION

Under Indiana code, tax assessments are presumed to be valid and accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-3-4-14 affirmatively permits an affiliated group of corporations the privilege of filing a consolidated return, so long as each member company has adjusted gross income derived from Indiana sources. The filing of a consolidated return is conditioned upon all the members of the affiliated group consenting to all the provisions of federal and Indiana income tax code—including regulations promulgated by the Department. *Id.* The filing of the return is considered to be that consent. *Id.* IC 6-3-2-2 provides a three factor apportionment formula for determining income derived from Indiana sources.

IC 6-3-2-2(b) computes the apportionment of Indiana income by summing a Taxpayer's property, payroll, and sales factors—then dividing this by four, with the sales factor being double-weighted. The tax due is determined by multiplying that income by the tax rate. This is termed the standard method. However, if the standard method fails to fairly reflect Indiana sourced income, the Department may use another method that effectuates a more equitable allocation and apportionment of a taxpayer's income. *See* 45 IAC 3.1-1-39. A taxpayer may use another method—if it obtains a ruling from the Department. *Id.*

In previous years, Taxpayer has used the stacked method. Under the stacked method, the individual tax for each member company is computed—then summed to arrive at the consolidated tax amount. This varies from the standard method which combines all the member companies' factors and then computes the tax due. Taxpayer advocates that the stacked method better reflects its Indiana sourced income because that computational method better reflects the operational logistics of its member companies. Taxpayer also advocates that since it has used the stacked method in the past—with the approval of the Department—the assessment by the Department using the standard method on the 2002 return is inequitable, based on reliance.

The United States Supreme Court, the Indiana Tax court, and the Department all recognize that the standard method is the method most used by related corporations to compute their state income taxes. In Container Corp. of America v. Franchise Tax Board, 463 U.S. 159, 170 (1983), the United States Supreme Court not only affirmed the standard formula but also stated that it has become a benchmark against which other apportionment formulas are judged. The Indiana Tax Court recognizes Indiana's reliance on the standard formula. *See Wabash, Inc. v. Department of State Revenue*, 729 N.E.2d 620, 625 (Ind. Tax 2000) and Sherwin-Williams Co. v. Dept. of State Revenue, 673 N.E.2d 849, 851 (Ind. Tax 1996). The basic premise and intent of a consolidated income tax return is that the group is treated as a single corporation. Wabash, 729 N.E.2d at 626. In a consolidated return, the separate entities of the various member corporations are disregarded; the consolidated income of the entire group is reported on a single return and a single tax is paid on the total income. *Id.* Based on this, great deference and weight is given to using the standard method. Deviations from the standard method must be justified.

45 IAC 3.1-1-39 requires a Taxpayer to acquire a ruling permitting the use of different formula which more fairly reflects its income from Indiana sources. Taxpayer asserts that the stacked method used by it was expressly reviewed and accepted by the Department when Taxpayer was

audited for the tax years 1993 through 1998. Taxpayer adds that since that audit, no substantial changes in operations have occurred. Based on these facts, Taxpayer reasonably could have concluded that the Department had authorized Taxpayer to use the stacked method. But it now is stated plainly that Taxpayer was and is on notice that it will be required to compute its tax liabilities using the standard method—unless Taxpayer secures a ruling from the Department to use an alternative method.

FINDING

Taxpayer's protest is sustained. Taxpayer's return for 2002 is accepted using the computations under the stacked method. The assessment was issued on May 3, 2004. This is the date that Taxpayer was placed on notice that the standard method is the required computational method for a consolidated return—unless a ruling is secured by Taxpayer from the Department to use an alternative method.

II. Corporate Income Tax—Assessment of Penalties

DISCUSSION

Under IC 6-8.1-5-1(a), the amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. Because Taxpayer is sustained on the protest to the assessment, the penalties issue is moot.

FINDING

Taxpayer's protest is sustained—based on being a moot issue.